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## **REMARKS AND ARGUMENTS**

### **Double Patenting**

The Examiner provisionally rejected **Claims 23-38** as claiming the same invention as that of **Claims 2** through **16** of co-pending Application No. 10/179,696 (Docket No. 8618C). In a separate communication, the referenced co-pending Application is being expressly abandoned, which action will obviate the rejection of **Claims 23-38** in the present Application.

### **Claim Objection**

In paragraph 3 of the present Office action, it was noted that **Claim 24** was unnecessarily redundant due to the claim amendments made in the response to the previous Office action. The cancellation of **Claim 24** in this response has obviated the objection.

### **Claim Rejection Under 35 U.S.C. § 102**

In paragraph 6 of the present Office action, **Claim 31** was rejected under 35 USC § 102(e) as being anticipated by U.S. Patent No. 6,120,632 to Dragoo *et al.* on the basis that the cited Dragoo *et al.* reference discloses "at least one leg cuff (32)...[comprising] an "activated region" that is preferably formed of an incrementally stretched laminate".

The rejection of **Claim 31** is respectfully traversed on the ground that the cited Dragoo *et al.* reference fails to disclose all of the limitations of **Claim 31** and therefore fails to anticipate the present invention.

### **Lack of Anticipation**

**Claim 31** contains the limitation that the outer leg cuff comprises an incrementally stretched laminate. On the other hand, the leg cuff (32) described in the Dragoo *et al.* reference is a barrier leg cuff, rather than an outer leg cuff. The distinction between an outer leg cuff and a barrier leg cuff is clearly delineated in both the present Application and the Dragoo *et al.* reference, as explained below.

In the present Application, on page 1 in the first paragraph of the Background section, the general term "leg cuffs" is introduced and it is recited that "[l]eg cuffs, in general, are known variously in the art as leg cuffs, leg bands, side flaps, barrier cuffs, containment flaps, and/or elastic cuffs." In the immediately following paragraph, it is recited that "[o]uter leg cuffs are located distally from the longitudinal centerline, relative to other leg cuff elements that may be present", thus distinguishing outer leg cuffs from barrier cuffs, among other forms. This distinction is further delineated on page 7 in the third full paragraph, where it is recited that "[t]he term "outer leg cuff" refers herein to a leg cuff disposed substantially adjacent the portions of the side edges 50 defining the leg openings 32 when the diaper 20 is

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closed and distally relative to any other leg cuff element which may also be present in a diaper 20, such as an inner cuff, a barrier cuff, a containment flap, and the like" (underlining added).

In the cited Dragoo *et al.* reference, it is recited in the text beginning in column 3 at line 66 and continuing into column 4 that "[t]he diaper 20 may also include...gasket leg cuffs (not shown). Commonly assigned U.S. Pat. No. 4,795,454 issued to Dragoo on Jan. 3, 1989...and U.S. Pat. No. 4,938,755 issued July 3, 1990 to Foreman, are incorporated herein by reference to illustrate gasket cuffs and barrier leg cuffs 32" (underlining added). The immediately following paragraph begins with the recitation that "[t]he diaper 20 preferably has a pair of upstanding barrier leg cuffs 32" (underlining added). Thus, the cited Dragoo *et al.* reference clearly discloses gasket leg cuffs and barrier leg cuffs as being different structural elements.

Furthermore, in the incorporated Dragoo '454 patent, the gasket leg cuffs, also called gasketing cuffs, are explicitly described and depicted as being distinct from the barrier leg cuffs. For example, in the description in the paragraph bridging from column 3 into column 4 of the diaper shown in Figure 1, "gasketing cuffs 56 each comprising a gasketing flap 58" and "barrier cuffs 62 each having a...proximal edge 64...and seal means 78...for adjoining the proximal edge 64 to the gasketing flaps 58" of the gasketing cuffs 56 are disclosed. These elements are also clearly shown in the Figures. A comparison with the disclosure of the present Application reveals that the gasket leg cuffs, also called gasketing cuffs, in the Dragoo '454 patent clearly correspond to the outer leg cuffs of the present invention.

Thus, the terms used in the present Application, the cited Dragoo *et al.* reference, and the Dragoo '454 patent incorporated into that reference for the express purpose of illustrating the two types of cuffs, are related as follows:

(gasket leg cuff = gasket cuff = gasketing cuff = outer leg cuff) ≠ (barrier leg cuff = barrier cuff)

In other words, the "gasket leg cuff" and the "gasket cuff" of the cited Dragoo *et al.* reference are equivalent to each other and to the "gasketing cuff" of the incorporated Dragoo '454 patent, and all three of the preceding are equivalent to the "outer leg cuff" of the present invention. Similarly, the "barrier leg cuff" and the "barrier cuff" of the cited Dragoo *et al.* reference are equivalent to each other and to the "barrier cuff" of the incorporated Dragoo '454 patent. However, the barrier (leg) cuff is not equivalent to the outer leg cuff. Therefore, the cited Dragoo *et al.* reference fails to teach each and every element of Claim 31 and does not anticipate this claim.

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Accordingly, it is respectfully requested that the rejection of **Claim 31** under 35 USC § 102(e) be reconsidered and withdrawn.

#### **Claim Rejection Under 35 U.S.C. § 103**

In paragraph 8 of the present Office action, **Claim 35** was rejected under 35 USC § 103(a) as being unpatentable over the same cited Dragoo *et al.* reference in view of U.S. Patent No. 4,690,681 to Haunschild *et al.*

The rejection of **Claim 35** is respectfully traversed on the ground that a *prima facie* case of obviousness has not been established. According to MPEP 2143, to establish a *prima facie* case of obviousness, three basic criteria must be met:

- there must be some suggestion or motivation to modify the reference or to combine reference teachings,
- there must be a reasonable expectation of success, and
- the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The present rejection of **Claim 35** is based on the premise that the cited Dragoo *et al.* reference discloses "leg cuffs comprising an incrementally stretched laminate." However, as discussed above with regard to the rejection of **Claim 31** under 35 USC § 102(e), the cited Dragoo *et al.* reference describes barrier leg cuffs rather than outer leg cuffs. The proposed modification of the absorbent article of the cited Dragoo *et al.* reference to make it pre-closed fails to remedy this failure to teach each and every element of **Claim 35**.

Instead, the combination of the specifically referenced barrier leg cuff structure of the cited Dragoo *et al.* reference with the panty-like structure of the Haunschild *et al.* reference would create a panty-like garment with incrementally stretched barrier leg cuffs, not an article of the present invention having the outer leg cuff comprising an incrementally stretched laminate. Therefore, the proposed combination of the references would fail to teach or suggest all of the limitations of the rejected claim.

Accordingly, it is respectfully requested that the rejection of **Claim 35** under 35 USC § 103(a) be reconsidered and withdrawn.

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**Allowable Subject Matter**

In paragraph 10 of the present Office action, Claims 1-22 were allowed and Claims 23-30, 32-34, and 36-38 were listed as being allowable if the provisional double patenting rejections were overcome and if rewritten in independent form. It is respectfully submitted that the latter requirement for rewriting in independent form is not applicable to Claims 23-30. It is also respectfully averred that the latter requirement is not applicable to Claims 32-34 and Claims 36-38 in light of the above arguments averring the allowability of Claims 31 and 35, from which these claims depend.

In particular, Claims 23, 25, and 26 depend from allowed independent Claim 1 and Claims 27-30 depend from allowed independent Claim 16. Claim 24 has been cancelled in this response. Therefore, Claims 23 and 25 through 30 are properly allowable in their present dependent form.

In addition, as argued above, independent Claim 31 is properly allowable and because Claims 32-34 depend from and thereby contain all the limitations of this claim, these dependent claims are likewise allowable in their present form. Similarly, as argued above, independent Claim 35 is properly allowable and because Claims 36-38 depend from and thereby contain all the limitations of this claim, these dependent claims are likewise allowable in their present form.

**Summary of this Response**

No new matter has been added in this response. In light of the above amendments and remarks, it is requested that the objection and rejections be reconsidered and withdrawn and that the pending claims be allowed.

Respectfully submitted,

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27 August 2003

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